**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 18 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on December 29, 2011. The Administrative Appeals Office (AAO) rejected the petitioner's appeal of that decision on December 26, 2012. The matter is before the AAO again on a motion to reopen. The motion to reopen will be rejected.

The petitioner was properly notified that an appeal must be filed within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). As the appeal was untimely, it was rejected as improperly filed. Neither the Immigration and Nationality Act, nor the regulations, grant the AAO authority to extend this time limit. Counsel asserts that U.S. Citizenship and Immigration Services (USCIS) received the appeal within 30 days of counsel's receipt of the director's decision. However, the regulation at 8 C.F.R. § 103.8(b) states that "[s]ervice by mail is complete upon mailing."

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. The AAO also declines to reopen the matter on on its own motion, as counsel has not demonstrated that the rejection was in error.

Even if the motion were not rejected, it would be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the required statement. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed.

Furthermore, a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)). "There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 at 107. Based on its discretion, "[T]he [USCIS] has some latitude in deciding when to reopen a case. [USCIS] should have the right to be restrictive. Granting such motions too freely will permit endless delay of deportation by aliens creative and fertile enough to continuously produce new and material facts sufficient to establish a prima facie case." *Id.* at 108. The result also needlessly wastes the time and efforts of the triers of fact who must attend to the filing requests. *Id.* A party seeking to reopen a proceeding bears a "heavy burden." *Id.* at 110. With the current motion, the petitioner has not met that burden.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reopen is rejected.